

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Emergency Request for Review by)	WC Docket No. 08-71
Virgin Islands Telephone Corp. d/b/a)	
Innovative Telephone of Decision of)	
Universal Service Administrator)	
)	

**VIRGIN ISLANDS TELEPHONE CORP. D/B/A INNOVATIVE TELEPHONE'S
REQUEST FOR REVIEW OF
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR
AND EMERGENCY MOTION FOR A STAY**

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(202) 719-7254

May 13, 2013

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I. INTRODUCTION AND SUMMARY

Pursuant to sections 1.43, 54.719(c), 54.721, and 54.722 of the Commission's rules,¹ the Virgin Islands Telephone Corp. d/b/a Innovative Telephone ("Innovative") respectfully submits this request for review and emergency motion for a stay of the Recovery Notification for HC-2008-345 (SAC 643300) dated April 9, 2013 ("Notification").² In the Notification, the Universal Service Administrative Company ("USAC") advises Innovative of its intent to recover *at the end of May 2013* \$5,683,667 in high cost support related to an audit of the company's compliance with the Federal High Cost Universal Service Program for the period from July 1, 2007 through June 30, 2008 – an audit that is the subject of a petition for review that has been pending before the Commission since October 2010.³

¹ 47 C.F.R. §§ 1.43, 54.719(c), 54.721, and 54.722.

² See Appendix A (Letter to Tisha Lake, Innovative, from USAC, High Cost Management (dated April 9, 2013)).

³ See *Request for Review by Virgin Islands Telephone Corp. d/b/a Innovative Telephone of Decision of Universal Service Administrator*, Docket 08-71 (filed October 21, 2010) ("Petition for Review").

As a result of the audit in question, USAC determined that Innovative had been overpaid \$9,729,637 in high-cost support during the audit period – a determination with which Innovative strongly disagrees. In its petition for review, Innovative explained how USAC erred in its treatment of deferred tax asset and erroneously calculated the amount of high cost support that Innovative allegedly had been overpaid. The proper recognition of the deferred tax asset and the correct calculation of high cost support actually paid to Innovative would reduce the amount the company had been overpaid from \$9,729,637 to \$2,696,370.

Innovative seeks Commission review and a stay of the Notification because USAC is improperly seeking to recover amounts that are the subject of Innovative's pending petition for review. Under the Commission's rules, the Debt Collection Improvement Act ("DCIA"), and USAC's policies, USAC is not entitled to recover by means of administrative offset amounts that are the subject of an appeal during the pendency of that appeal. However, that is precisely what USAC seeks to do here. Specifically, USAC is attempting to recover \$5,683,667 in high cost support from Innovative – an amount that includes \$2,987,296 in support that is the subject of Innovative's appeal and to which Innovative will be entitled if it prevails in its appeal. At this juncture, USAC is only entitled to recover \$2,696,370, which represents the total amount of high cost support Innovative would be required to return to USAC if the Commission rules in Innovative's favor on its appeal.

Until Innovative's appeal has been resolved, the Commission should stay the Notification and any effort by USAC to recover from Innovative any amount associated with the June 30, 2008 audit in excess of \$2,696,370. Innovative is likely to prevail on the merits of its challenge to the Notification because it conflicts with Commission regulations, the DCIA, and established policies. In addition, the equities weigh strongly in favor of staying the Notification and

USAC's excessive recovery efforts. Absent a stay, Innovative will suffer irreparable harm in the form of lost high cost support that will cause the company substantial competitive injury. No other party will suffer any harm if USAC's Notification and excessive recovery efforts are stayed pending review. The public interest, moreover, weighs in favor of a stay until the Commission resolves Innovative's Petition for Review. For all these reasons, the Commission should grant a stay.

II. STATEMENT OF THE FACTS

Innovative is the incumbent local exchange carrier in the U.S. Virgin Islands, operating pursuant to a franchise granted by the USVI Government in 1959.⁴ Innovative is a Virgin Islands corporation and is headquartered on St. Thomas.

On behalf of USAC, McBride, Lock & Associates ("Auditor") conducted an audit of the high cost support paid to Innovative for the year ended June 30, 2008. One of the issues in the audit concerned the appropriate treatment of deferred tax asset. Under Part 32, account 4340, Net non-current deferred operating income taxes, is used to reflect "accumulated deferred federal income taxes resulting from differences in taxes computed using booked depreciation expense calculated on a straight line basis, and taxes paid to the IRS that result from use of accelerated depreciation methods."⁵ The National Exchange Carrier Association, Inc. ("NECA") historically took the position that the Commission's Part 65 rules did not permit negative balances in

⁴ Franchise for the Virgin Islands Telephone Corporation (Oct. 31, 1959); Act No. 504 of the Third Legislature of the Virgin Islands, Authorizing the Sale of the Virgin Islands Telephone System, the Granting of a Franchise, and for Other Related Purposes (approved Oct. 9, 1959), 1959 V.I. Sess. Laws pp. 193-202.

⁵ See Petition for Review, Appendix C - Memorandum from Carol A. Brennan and Richard R. Snopkowski, NECA, to General Contacts at all NECA Member Companies regarding Negative Balances in Account 4340 Net Non-Current Deferred Operating Income Taxes (Aug. 8, 2006).

Account 4340, which results in a deferred tax asset, because, according to NECA, it “could have the anomalous effect of increasing the rate base.”⁶

However, in 2007 based on guidance from the Commission, NECA changed its policies and allowed carriers to maintain a negative balance (deferred tax asset) in Account 4340 for purposes of determining Interstate Common Line Support (“ICLS”) and High Cost Loop Support (“HCLS”).⁷ Consistent with NECA’s revised policies, the Auditor recommended incorporating all applicable interstate deferred tax asset balances for Innovative in calculating the company’s high cost support.⁸

Even though the Auditor found that Innovative had been “underpaid” high cost support by virtue of the improper treatment of deferred tax asset, USAC did not accept the Auditor’s recommendation. Instead, disregarding NECA’s policies in effect at the time, USAC concluded that a negative balance (deferred tax asset) in Account 4340 is not allowable for purposes of determining ICLS and HCLS.⁹ Based on this and other audit results, USAC determined that Innovative had been overpaid \$9,729,637 in high cost support during the audit period.

⁶ *Id.*

⁷ Petition for Review, Appendix D - Memorandum from Carol A. Brennan and Richard R. Snopkowski, NECA, to General Contacts at all NECA Member Companies regarding Negative Balances in Account 4340 (March 9, 2007); Petition for Review – Appendix E - Memorandum from Carol A. Brennan and Richard R. Snopkowski, NECA, to General Contacts at all NECA Member Companies regarding Negative Balance Adjustments to Account 4340 (June 13, 2007).

⁸ Petition for Review, Appendix A - High Cost Beneficiary Attestation Audit Report, HC-2008-345, McBride, Lock & Associates Independent Auditors’ Report, dated July 31, 2009, at 6 - FINDING 2: DEFERRED TAX ASSET.

⁹ Petition for Review, Appendix B - Letter to Joyce Campbell, Innovative, from USAC, High-Cost and Low-Income Division (dated August 23, 2010). USAC’s treatment of the deferred tax asset and its decision to disregard Innovative’s interstate deferred tax asset balances for the July 1, 2007 through June 30, 2008 audit period is the same issue raised in Innovative’s Petition For Review of USAC’s management response to the Independent Auditor’s Report HC-FL-042, which was a follow-up audit to HC-2007-382 that evaluated Innovative’s compliance with the requirements of the Federal High Cost Universal Service Program for the period from

USAC's failure to recognize properly Innovative's interstate deferred tax asset balances significantly understates the high cost support to which Innovative is lawfully entitled. To compound this error, USAC's calculations of the high cost support that should be recovered from Innovative are flawed by including high cost support received outside the audit period, double counting the amount of high cost support allegedly overpaid to Innovative, and ignoring support that Innovative has already repaid.

On October 21, 2010, Innovative filed its Petition for Review, seeking Commission review of both the appropriate treatment of deferred tax asset and the correct calculation of Innovative's high cost support. The proper recognition of the deferred tax asset and the correct calculation of high cost support actually paid to Innovative would reduce from \$9,729,637 to \$2,696,370 the amount of high cost support USAC is entitled to recover.¹⁰

On November 5, 2012 – more than two years after Innovative had filed its Petition for Review – USAC sent Innovative a letter indicating its intention to recover \$9,729,637 in high cost support associated with the June 30, 2008 audit.¹¹ This recovery notification acknowledged Innovative's pending appeal and noted USAC's policy not to seek to recover amounts “under appeal with the FCC.” Nonetheless, for reasons not entirely clear, USAC initially sought recovery of the entire amount that USAC had determined was owed by Innovative – a

(Continued . . .)

July 1, 2006 through June 30, 2007. *See Request for Review by Virgin Islands Telephone Corp. d/b/a Innovative Telephone of Decision of Universal Service Administrator*, Docket 96-45 (filed September 28, 2010). This appeal also remains pending before the Commission.

¹⁰ Petition for Review, at 2, n.4.

¹¹ *See* Appendix B (Letter to Joyce Campbell, Innovative, from USAC, High Cost Management (dated November 5, 2012)). The Petition for Review contains a typographical error, inaccurately indicating that the proper recovery amount was \$2,696,371, when the correct amount is \$2,696,370.

determination that Innovative contends is erroneous and that the Commission is currently reviewing.

Innovative promptly requested that USAC revisit its recovery calculation providing information regarding the amounts that Innovative calculated as being not “under appeal” and thus subject to recovery at this juncture. Innovative also furnished the data underlying its calculations.¹²

Based on the information provided by Innovative, USAC issued a revised recovery notification on February 27, 2013, in which it indicated USAC’s intent to recover \$5,683,667 in high cost support.¹³ This recovery amount is approximately \$3.0 million less than USAC initially identified as subject to recovery but is still approximately \$3.0 million higher than the amount USAC is entitled to recover at this juncture due to the pendency of Innovative’s petition for review.

On March 18, 2013, pursuant to section 54.721 of the Commission’s rules, Innovative timely requested that USAC review its February 27, 2013 revised recovery notification.¹⁴ In the Notification, USAC rejected this request, advising Innovative that “USAC will process the recovery of \$5,683,667 in the April 2013 High Cost Program disbursements released at the end of May 2013.”¹⁵ Innovative seeks Commission review and a stay of the Notification.

¹² See Appendix C (Email to Robert Binder, USAC, from Bennett L. Ross, Counsel to Innovative (dated December 11, 2012)).

¹³ See Appendix D (Letter to Tisha Lake, Innovative, from USAC, High Cost Management (dated February 27, 2013)).

¹⁴ See Appendix E (Letter to USAC, High Cost Management, from Bennett L. Ross, Counsel to Innovative (dated March 18, 2013)).

¹⁵ Notification, at 1.

III. DISCUSSION

A. USAC Is Improperly Seeking To Recover Amounts That Are The Subject Of Innovative's Pending Petition For Review.

The Commission should review and grant a stay of the Notification because it does not comport with the FCC's rules, the DCIA, or USAC's policies. As USAC concedes, it is required to "suspend the collection of recovery through the offset process while the appeal is pending."¹⁶ However, USAC pays lip service to this requirement by seeking to recover from Innovative by means of an administrative offset amounts that are the subject of Innovative's pending appeal.

Innovative acknowledged in its Petition for Review that USAC is entitled to recover \$2,696,370 in high cost support because this represents the amount that is not currently subject to its appeal to the Commission. If Innovative prevails on its appeal – and thus the deferred tax asset is properly recognized and the amount of high cost support actually paid to Innovative is correctly calculated – USAC would only be entitled to recover \$2,696,370 – a recovery amount that USAC does not appear to dispute. Yet, USAC is improperly seeking to recover more than double this amount during the pendency of Innovative's appeal.

USAC's procedures to recover funds from beneficiaries must be "consistent with the Commission's rules addressing debt collection."¹⁷ The Commission's rules addressing debt collection provide that the term "debt" means "an amount of money, funds, or property that has been *determined by an agency official* to be due to the United States" 47 C.F.R. § 1.1901(e)

¹⁶ Notification, at 1 (quoting Letter from Anthony J. Dale, Managing Director, FCC, to Scott Barash, Acting CEO, USAC, at 2 (Jan. 30, 2008)).

¹⁷ See Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Karen Majcher, Vice President - High Cost and Low Income Division, USAC, DA 11-243, at 2, n.2 (Feb. 8, 2011).

(emphasis added). The term “agency” means the Commission or any other agency of the U.S. government.¹⁸

Here, by virtue of the Petition for Review filed by Innovative more than two years ago, the Commission has not determined how much high cost support that was paid to Innovative during the June 30, 2008 audit period is “due to the United States.” This determination will not be made until the Commission resolves Innovative’s Petition for Review. It is for this reason that the Commission’s “red light” rule does not apply “if the applicant has timely filed a challenge through an administrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed the Commission.”¹⁹ This also is the reason that USAC is required to cease recovery efforts by means of administrative offset during the pendency of an appeal.

The only “debt” that Innovative currently owes is the amount related to audit findings not under appeal. This amount is \$2,696,370, which represents the high cost support that Innovative would be required to refund to USAC if the Commission rules in Innovative’s favor in resolving the Petition for Review. To be consistent with the Commission’s rules, the DCIA, and USAC’s policies, USAC is only entitled to recover from Innovative the amount of \$2,696,370, not the \$5,683,667 set forth in the Notification.

B. The Commission Should Stay The Notification And USAC’s Efforts To Recover Amounts That Are The Subject Of Innovative’s Pending Petition For Review.

In determining whether to grant a stay, “the Commission applies the four factor test established in *Virginia Petroleum Jobbers Association v. FPC*, as modified in *Washington*

¹⁸ See 47 C.F.R. § 1.1901(b).

¹⁹ 47 C.F.R. § 1.1910(b)(3)(i); see also 47 C.F.R. § 1.1916; 31 C.F.R. § 903(c) (“an agency ordinarily should suspend collection action upon a request for waiver or review ...”).

Metropolitan Area Transit Commission v. Holiday Tours, Inc.”²⁰ Under that test, the Commission asks whether: “(i) Petitioners are likely to prevail on the merits; (ii) Petitioners will suffer irreparable harm absent a stay; (iii) other interested parties will not be harmed if the stay is granted; and (iv) the public interest favors grant of the stay.”²¹ “To justify the granting of a stay, a movant need not always establish a high probability of success on the merits. Probability of success is inversely proportional to the degree of irreparable injury evidenced.”²² In this case, all four factors strongly weigh in favor of a stay.

First, as explained above, Innovative is likely to prevail on review because the Notification and USAC’s excessive recovery efforts during the pendency of Innovative’s appeal conflict with Commission’s regulations, the DCIA, and Commission policies. USAC is not permitted – and the Commission should not condone – USAC’s attempts to recover amounts that are the subject of a pending appeal. Although the Notification claims adherence to applicable rules by stating that “the amount of underpayment” associated with deferred tax asset (\$2,985,144) will not be included in the amount being recovered because that issue “is currently under appeal at the FCC,” this claim cannot withstand scrutiny.

In arriving at the \$5,683,667 amount that it seeks to recover at this juncture, USAC completely disregarded the \$2,985,144 in high cost support that Innovative contends – and the

²⁰ *Regulation of Prepaid Calling Card Servs.*, Order, 22 FCC Rcd 5652, ¶ 7 (2007) (citing *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

²¹ *City of Boston, Mass, & Sprint Nextel*, Order, 22 FCC Rcd 2361, ¶ 8 (2007) (footnote omitted).

²² *Cuomo v. U.S. Nuclear Regulatory Comm’n*, 772 F.2d 972, 974 (D.C. Cir. 1985); *accord Charter Commc’ns Entm’t I, LLC*, 22 FCC Rcd 13890, 13892 ¶ 4 n.17 (Media Bureau 2007).

Auditor agreed – Innovative had been underpaid by virtue of the improper treatment of deferred tax asset (Finding #2). USAC’s calculations are reflected below²³:

Adjusted Recovery Amounts as Determined by USAC		
	Amount	Source
1 Individual Recovery Items cited in 2.27.13 Letter		
a. Finding #1 Overpayment	(112,518)	Revised - USAC Letter of 2.27.13, Para. 2
b. Finding #2 Underpayment	-	Unchanged - USAC Letter of 2.27.13, Para. 4
c. Finding #3 Underpayment	6,335,601	Revised - USAC Letter of 2.27.13, Para. 2
d. Finding #5 Overpayment	(29,193)	Revised - USAC Letter of 2.27.13, Para. 2
e. Revised Recovery - Individual Items cited in USAC Letter	\$ 6,193,890	Sum of LL. 1.a through 1.d
2 Repayment Adjustment	(510,223)	
3 Revised Recovery Total cited in 2.27.13 USAC Letter	5,683,667	Revised - USAC Letter of 2.27.13, Para. 3

In essence, by treating the disputed amount associated with the deferred tax asset issue as “0,” USAC effectively is seeking to recover this disputed amount while the issue remains under review by the Commission. Indeed, USAC acknowledges as much in the Notification, stating that “[i]f the appeal is granted, USAC will process the additional monies as outlined in the audit findings.”

USAC has it exactly backwards. USAC is not entitled to recover *disputed amounts* from a carrier that are the subject of a pending appeal, with the promise that such disputed amounts will be “processed” (*i.e.*, refunded) if the carrier succeeds on its appeal. Rather, under the Commission’s rules and the DCIA, only *undisputed amounts* – that is, amounts not impacted by the outcome of an appeal – are properly subject to recovery during the pendency of the appeal.

²³ The recovery developed from the items specifically identified in USAC’s February 27, 2013 recovery letter would be \$6,193,890 (Line 1.e). However, paragraph 3 of that letter and the third paragraph of the Notification cites an adjusted recovery figure of \$5,683,667, an amount \$510,223 less than the calculated figure in Line 1.e. As shown by a comparison of Lines 3 and 4 above, this variation is approximately the same as Innovative’s suggested adjustment related to \$512,376 in repayments to USAC that were not considered in the initial audit findings. Consequently, it appears that USAC’s revised figure reflects the suggested adjustment even though it is not cited in the February 27, 2013 letter, although Innovative cannot determine the basis for the variation between the \$510,223 and \$512,376 figures.

Here, as reflected below, that undisputed amount subject to recovery during the pendency of Innovative’s appeal is \$2,696,370, and thus Innovative is likely to prevail on the merits of this petition:

Corrected Adjusted Recovery Amount		
	Amount	Source
1 Individual Recovery Items cited in 2.27.13 Letter		
a. Finding #1 Overpayment	(112,518)	Revised - USAC Letter of 2.27.13, Para. 2
b. Finding #2 Underpayment	(2,985,144)	Modified
c. Finding #3 Underpayment	6,335,601	Revised - USAC Letter of 2.27.13, Para. 2
d. Finding #5 Overpayment	(29,193)	Revised - USAC Letter of 2.27.13, Para. 2
e. Revised Recovery	\$ 3,208,746	Sum of LL.1.a through 1.d
2 Repayment Adjustment	512,376	Corrected
3 Corrected Recovery Total	2,696,370	

Second, absent a stay, Innovative will suffer irreparable harm that is “both certain and great; . . . actual and not theoretical.”²⁴ USAC’s decision to recover disputed amounts that are the subject of a pending appeal will result in a reduction of approximately \$3 million in high cost support to Innovative – an amount that is essential to Innovative’s deployment of a modernized broadband network that it needs to compete in the USVI. The loss of high cost support would jeopardize Innovative’s deployment plans and cause the company to suffer competitive injury by substantially hindering its ability to offer broadband services.²⁵ This type of economic harm is

²⁴ *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam).

²⁵ *PGBA, LLC v. United States*, 57 Fed. Cl. 655, 664 (2003) (explaining that “a lost opportunity to compete may constitute an irreparable harm”); *see also Autoskill Inc. v. Nat’l Educ. Support Sys., Inc.*, 994 F.2d 1476, 1498 (10th Cir. 1993) (agreeing with the district court that the loss of “investment and competitive position” constitutes irreparable harm), *overruled on other grounds TW Telecom Holdings Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011); *BasicComputer Corp. v. Scott*, 973 F.2d 507, 512 (6th Cir. 1992) (concluding that “the loss of fair competition . . . is likely to irreparably harm an employer”); *Ferry-Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589, 592 (8th Cir. 1984) (breach of exclusive distribution agreement constituted irreparable harm where company was disadvantaged in competitive market by inability to market unique seed corn).

unquantifiable and thus irreparable.²⁶ It is precisely the type of harm that warrants a stay pending review.

Third, a stay of the Notification and USAC's excessive recovery efforts will not harm third parties. The issue here is "whether injunctive relief would significantly harm other interested parties."²⁷ Even if such harm were identified, the Commission must "'balance the competing claims of injury and . . . consider the effect on each party of the granting or withholding of the requested relief.'"²⁸ No third parties – not even USAC – would be harmed if USAC is not permitted to recover disputed amounts during the pendency of Innovative's appeal.

Finally, the public interest heavily favors granting a stay. Most importantly, a stay will promote the policies of the DCIA, which permit the collection of debts only after an agency determination. Here, there has been no such determination until the Commission resolves Innovative's Petition for Review.

²⁶ *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 673-74 (D.C. Cir. 2005) (explaining that "irreparable injury is suffered when monetary damages are difficult to ascertain or inadequate" (quotation omitted)).

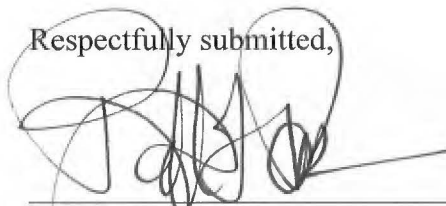
²⁷ *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 110 (D.C. Cir. 1986).

²⁸ *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 326 (D.C. Cir. 1987) (citation omitted).

IV. CONCLUSION

For the foregoing reasons, the Commission should review and grant a stay of the Notification and USAC's efforts to recover \$5,683,667 from Innovative while its Petition for Review remains pending at the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Ross', is written over a horizontal line.

Bennett L. Ross
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7254

May 13, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2013, I caused copies of the foregoing Request for Review and Emergency Motion for Stay By Virgin Islands Telephone Corp. d/b/a Innovative Telephone of Decision of the Universal Service Administrator to be served upon the following party by first-class mail:

Universal Service Administrative Company
Attention: David Capozzi, Acting General Counsel
2000 L Street, N.W., Suite 200
Washington, DC 20036

A handwritten signature in black ink, appearing to read "David Capozzi", is written over a horizontal line.

APPENDIX A



Universal Service Administrative Company

Via Email and Certified Mail

April 9, 2013

Tisha Lake
Financial Analyst
Vitelco-Innovative
4611 Tutu Park Mall
St. Thomas, VI 00802

Re: Recovery Notification for HC-2008-345 (SAC 643300)

Dear Ms. Campbell:

On March 18, 2013, Bennett Ross, Esq. of the law firm Wiley Rein LLP provided Universal Service Administrative Company (USAC) with a Requested Review of Revised Recovery in disagreement with the recovery amount in the letter sent to you on February 27, 2013. In this letter, Mr. Ross stated that USAC's recovery valuation did not account for amounts that are presently under appeal at the FCC.

The FCC's Managing Director has explicitly directed USAC to stay action on any audit findings which have been formally appealed to the Commission by the carriers. USAC has been instructed "*pursuant to 47 CFR sec.54.719, and consistent with 47 CFR sec. 54.725(a) and (b), [] suspend the collection of recovery through the offset process while the appeal is pending*".¹ Therefore, USAC will not include the amount of underpayment found in finding #2 of \$2,985,144 as the entire finding is currently under appeal at the FCC. If the appeal is granted, USAC will process the additional monies as outlined in the audit findings.

USAC will process the recovery of \$5,683,667 in the April 2013 High Cost Program disbursements released at the end of May 2013. USAC will offset any amount to be recovered against support Vitelco is scheduled to receive through the monthly High Cost Program support disbursement process. If the amount to be recovered by USAC exceeds the current month's disbursement, USAC will continue to net the recovery amount against subsequent monthly disbursements. USAC also reserves the right in its discretion and at anytime to issue an invoice to Centennial for all or a portion of the amount to be recovered.

Sincerely,

¹ Letter from Anthony J. Dale, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company, dated Jan. 30, 2008, page 2.

High Cost Management

Cc: Bennett Ross (Wiley Rein)

APPENDIX B



Universal Service Administrative Company

Via Electronic Mail & Certified Mail

November 5, 2012

Joyce Campbell
Controller-Internal Audit/Plant/Separations
Vitelco-Innovative
4611 Tutu Park Mall
St. Thomas, VI 00802

Re: Recovery Notification for HC-2008-345 SAC 643300

Dear Ms. Campbell:

On August 23, 2010, you were notified that the Universal Service Administrative Company (USAC) would recover \$9,729,637 of High Cost Program support resulting from an audit (HC-2008-345) of Vitelco-Innovative (Vitelco), SAC 643300. On October 21, 2010, Vitelco filed an appeal with the Federal Communications Commission (FCC) that stopped the recovery of funds. However, USAC's policy is to recover funds associated with audit findings not under appeal, even if there are separate findings which have an appeal outstanding with the FCC or USAC. This letter is to inform you that USAC will be recovering the amount in the audit not under appeal with the FCC.

USAC understands that this recovery will result in a significant decrease in cash flow to Vitelco because the findings under appeal with the FCC would reduce the recovery amount associated with this audit. Vitelco's concern will only be able to be addressed through a resolution of the appeal currently pending an FCC decision. Should the FCC grant said appeal, USAC will process the additional monies as outlined in the audit findings.

USAC will process the recovery of \$9,729,637 in the November 2012 High Cost Program disbursements released at the end of December 2012. USAC will offset any amount to be recovered against support Vitelco is scheduled to receive through the monthly High Cost Program support disbursement process. If the amount to be recovered by USAC exceeds the current month's disbursement, USAC will continue to net the recovery amount against subsequent monthly disbursements. USAC also reserves the right in its discretion and at anytime to issue an invoice to Vitelco for all or a portion of the amount to be recovered.

Sincerely,

High Cost Management

APPENDIX C

Ross, Bennett

From: Ross, Bennett
Sent: Tuesday, December 11, 2012 9:04 AM
To: 'Robert Binder'
Cc: Amy Kavelman (akavelman@usac.org)
Subject: Recovery Notification for HC-2008-345 SAC 643300
Attachments: Calculations for USAC Audit HC-2008-345_12.6.12.xlsx; VITELCO ICLS per USAC Audit Finding #3.xls; VITELCO ICLS per USAC Audit Finding #5.xls; McBride Lock Work Papers A 20 through A110.zip

Rob,

As requested, attached please find a series of spreadsheets related to Innovative's calculations of the undisputed amounts subject to recovery as a result of USAC Audit HC-2008-345. As these calculations demonstrate, the total amount subject to recovery by USAC at this juncture is \$2,696,370 (which is the total recoverable amount cited in the Innovative's Request for Review at Page 2, Footnote 4). I should note that this amount differs from the initial figure I provided to you in my email of November 20, 2012 because we inadvertently excluded undisputed adjustments of USAC's Auditors Finding #2 that subsequently were reversed by USAC Management.

As you requested, we have provided calculations of High Cost Loop (HCL) and Interstate Common Line Support (ICLS) separately for each audit finding. However, in reviewing these calculations, I wanted you to be aware that they are not limited "to the un-appealed findings #1, #3, #5" as requested in your November 21 email. The reason is because Innovative's request for review addressed two separate issues related to USAC Audit HC-2008-345: first, USAC's treatment of deferred tax asset, which relates to audit finding #2; and, second, USAC's calculation of the amount of high cost support that it seeks to recover from Innovative as a result of the audit, which relates to the remaining audit findings. Consequently, in determining the undisputed amount that Innovative acknowledges is subject to recovery during the pendency of its request for review, it is appropriate to take into account all of the audit findings that are subject to FCC review, which is the approach that Innovative has taken in its calculations.

To facilitate your analysis, the attached spreadsheets contain calculations representing the following categories:

1. Calculated recovery amounts of USAC Auditors' Report HC-2008-1;
2. Adjustments to recovery amounts imposed by USAC Management in the USAC Management Response dated March 22, 2010;
3. Total recovery amounts as adjusted by USAC Management;
4. Disputed recovery calculations and required adjustments as addressed in Innovative's Request for Review; and
5. Total recoverable amounts after Innovative adjustments.

The total for each category is summarized below:

Calculated Amounts USAC Auditor	Disputed Adjustments Imposed by USAC Management	Totals per USAC Management	Adjustment Calculations for Amounts Disputed by VITELCO	Adjusted Recovery Amounts VITELCO
(a)	(b)	(c) = (a)+(b)	(d)	(e) = (c)+(d)
3,208,746	6,520,890	9,729,636	(7,033,266)	2,696,370

The principal spreadsheet file of the attached materials, "Calculations for USAC Audit HC-2008-345_12.6.12.xls", contains a summary of the calculations by category that demonstrates the amounts shown in the table above. This principal spreadsheet file also contains twelve supporting schedules that present the specific calculations of the USAC Auditors and Innovative, by finding.

Also attached are two spreadsheet files that contain the detailed calculations of the USAC Auditors as related to the 2005 ICLS support amounts for Findings 3 and 5:

1. "VITELCO ICLS per USAC Audit Finding #3.xls"; and
2. "VITELCO ICLS per USAC Audit Finding #5.xls".

Due to the voluminous nature of these ICLS-related files prepared by the USAC Auditors, they are included separately in this package.

For the most part, the attached files contain Excel spreadsheet versions of the USAC Auditors' work papers provided to Innovative. The versions provided by the Auditors were in PDF format and were reproduced by Innovative in spreadsheet format to facilitate analysis.

The actual PDF-version work papers provided by Auditors to Innovative are attached hereto in the ZIP file "McBride Lock Work Papers A20 through A110.zip". An analysis of these files indicates that in some cases the files provided were not the final versions that ultimately were used in the preparation of the Audit Report for HC-2008-345. Innovative replicated versions for the Auditors' final figures through discussions with the Auditors. If USAC requires the final Auditors' versions of these documents it will be necessary to obtain them from the Auditors or from USAC's own records should they be in possession of the Auditors' complete documentation of findings.

I trust this information is responsive to your request. To the extent you or your colleagues have detailed questions regarding Innovative's calculations, it would probably make most sense for me to put you in touch with Innovative's consultant who was responsible for generating the calculations, as I am unlikely to add much value to the conversation.

Thank you for your patience, and we look forward to hearing from you at your earliest convenience.

Bennett

APPENDIX D



Via Electronic Mail & Certified Mail

February 27, 2013

Joyce Campbell
Controller-Internal Audit/Plant/Separations
Vitelco-Innovative
4611 Tutu Park Mall
St. Thomas, VI 00802

Re: Revised Recovery Notification for HC-2008-345 SAC 643300

Dear Ms. Campbell:

On December 11, 2012, Bennett Ross from Wiley Rein LLP provided Universal Service Administrative Company (USAC) with supplemental calculations to support the disagreement over the recovery amount in the letter sent to you on November 5, 2012. In this information, Mr. Ross pointed out that USAC was including recovery on amounts that are currently under appeal with the FCC.

Upon further review, USAC agrees and has revised the amounts to reflect the following: Finding #1 an underpayment of \$112,518, Finding #3 an overpayment of \$6,335,601 and Finding #5 an underpayment of \$29,192.

The revised monetary impact that USAC will recover is \$5,683,667 of High Cost Program support resulting from an audit (HC-2008-345) of Vitelco-Innovative (Vitelco), SAC 643300. This letter is to inform you of the revised the amount to be recovered based upon further investigation of the calculations.

USAC will not include the amount of underpayment found in finding #2 of \$2,985,144 as the entire finding is currently under appeal at the FCC. Vitelco's concern can only be addressed through a resolution of the appeal currently pending an FCC decision. Should the FCC grant said appeal, USAC will process the additional monies as outlined in the audit findings.

USAC will process the recovery of \$5,683,667 in the March 2013 High Cost Program disbursements released at the end of April 2013. USAC will offset any amount to be recovered against support Vitelco is scheduled to receive through the monthly High Cost Program support disbursement process. If the amount to be recovered by USAC exceeds the current month's disbursement, USAC will continue to net the recovery amount against subsequent monthly disbursements.

Joyce Campbell
Vitelco-Innovative
February 27, 2013
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Sincerely,

High Cost Management

Cc: Bennett Ross

APPENDIX E



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FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
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www.wileyrein.com

March 18, 2013

Bennett L. Ross
202-719-7524
bross@wileyrein.com

VIA ELECTRONIC MAIL
HCLI-IndustrySupport@usac.org

Letter of Appeal
High Cost and Lifeline
Universal Service Administrative Company
2000 L Street NW, Suite 200
Washington, DC 20036

Re: *Request for Review of Revised Recovery Notification for HC-2008-345 SAC 643300*

Dear Sir/Madam:

Pursuant to section 54.721 of the rules of the Federal Communications Commission ("FCC"), the Virgin Islands Telephone Corp. d/b/a Innovative Telephone ("Innovative") respectfully seeks review of the February 27, 2013 decision by High Cost Management ("Recovery Decision") regarding the amount that the Universal Service Administrative Company ("USAC") intends to recover in connection with a USAC audit that is currently under review by the FCC. Innovative does not believe that the Recovery Decision comports with the FCC's rules, the Debt Collection Improvement Act ("DCIA"), or USAC's policies.

By way of background, Innovative filed on October 21, 2010 a request that the FCC review a USAC audit of high cost support received by Innovative during the period of July 1, 2007 through June 30, 2008. As a result of this audit, USAC determined that it should recover \$9,729,637 in high cost support Innovative was allegedly overpaid during the audit period. In its request for review, Innovative outlined the grounds for relief, which included an issue regarding the proper recognition of the deferred tax asset related to Finding #2 in the audit and the correct calculation of the amount of high cost support actually paid to Innovative. As specifically outlined in its filing with the FCC, if Innovative prevails on its petition for review and the FCC finds in the company's favor on the two issues on appeal, Innovative would only be required to repay USAC \$2,696,371, not \$9,729,637.

By letter dated November 5, 2012, High Cost Management advised Innovative of USAC's intention to recover \$9,729,637 in high cost support associated with the audit. This recovery notification acknowledged Innovative's pending appeal and noted USAC's policy not to seek to recover amounts "under appeal with the FCC." Nonetheless, for reasons that were never entirely clear, High Cost Management



Universal Service Administrative Company

March 18, 2013

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initially sought recovery of the entire amount that USAC had determined was owed by Innovative – a determination that the FCC is currently reviewing.

Innovative promptly requested that High Cost Management revisit its recovery calculation. At the request of High Cost Management, Innovative provided information regarding the amounts that Innovative calculated as being not “under appeal” and thus subject to recovery at this juncture. Innovative also furnished the data underlying its calculations.

Based on the information provided by Innovative, High Cost Management issued a revised recovery notification on February 27, 2013, in which it indicated USAC’s intent to recover \$5,683,667 in high cost support for March 2013 to be paid at the end of April 2013. This recovery amount is approximately \$4.1 million less than High Cost Management identified as subject to recovery in its November 5, 2012 letter but is still approximately \$2.9 million higher than the amount USAC is entitled to recover at this juncture due to the pendency of Innovative’s petition for review.¹

As noted in Appendix 1, the primary area of disagreement involves the disputed Finding #2 from the audit that represents a \$2,985,144 underpayment to Innovative related to the treatment of deferred tax assets in the calculation of HCLS and ICLS support during the audit period. The auditor found in Innovative’s favor on this issue, but this finding was rejected by USAC. In its revised recovery notification, High Cost Management acknowledges that the amount of underpayment related to Finding #2 of \$2,985,144 “is currently under appeal at the FCC.” Nonetheless, High Cost Management still intends to recover this amount.

Innovative has acknowledged that USAC is entitled to recover \$2,696,371 in high cost support because this represents the amount that is not currently under appeal with the FCC. If Innovative prevails on its appeal, which would result in the proper recognition of the deferred tax asset related to Finding #2 and the correct calculation of the amount of high cost support actually paid to Innovative, there does not appear to be any dispute that USAC would only be entitled to recover

¹ As noted in Appendix 1, there appears to be a discrepancy between the adjustments described in the February 27, 2013 letter and the calculation of the adjusted amount High Cost Management now claims is subject to recovery.



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\$2,696,371, not the \$5,683,667 High Cost Management currently seeks to recover (let alone the \$9,729,637 recovery amount originally sought).

It should go without saying that USAC's procedures to recover funds from beneficiaries must be "consistent with the Commission's rules addressing debt collection." *See* Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Karen Majcher, Vice President - High Cost and Low Income Division, USAC, DA 11-243, at 2, n.2 (Feb. 8, 2011).

The Commission's rules addressing debt collection provide that the term "debt" means "an amount of money, funds, or property that has been determined by an *agency official* to be due to the United States" 47 C.F.R. § 1.1901(e) (emphasis added). The term "agency" means the FCC or any other agency of the U.S. government. Here, by virtue of the petition for review filed by Innovative, the FCC has not determined how much high cost support that was paid to Innovative for the audit period in question is "due to the United States." This determination will not be made until the FCC resolves Innovative's petition. It is for this reason that the Commission's "red light" rule does not apply "if the applicant has timely filed a challenge through an administrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed the Commission." 47 C.F.R. § 1.1910(b)(3)(i); *see also* 47 C.F.R. § 1.1916; 31 C.F.R. § 903(c) ("an agency ordinarily should suspend collection action upon a request for waiver or review ...").

Innovative concedes that it currently owes a "debt" related to the audit findings not under appeal, but the amount of that debt is only the sum of high cost support that is not implicated by its Petition for Review. As specifically noted in Innovative's petition, this amount is \$2,696,371.

To be fully consistent with the FCC's rules concerning debt collection and the DCIA, Innovative requests that USAC revise the recovery amount as identified in its February 27, 2013 letter to the \$2,696,371 that is not implicated by the pending Petition for Review.



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Innovative appreciates the willingness of High Cost Management to consider Innovative's concerns and revisit its original recovery calculations. However, High Cost Management's adjusted recovery amount also is flawed, and Innovative respectfully requests that USAC only recover \$2,696,371 in high cost support from Innovative during the pendency of the FCC's review of the company's appeal.

Sincerely,

A handwritten signature in dark ink, appearing to be "Bennett L. Ross", written over a circular stamp or seal.

Bennett L. Ross

BLR:rw

cc: David Capozzi
Robert Binder



Universal Service Administrative Company
March 18, 2013
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APPENDIX 1

Adjusted Recovery Amounts Cited in USAC February 27, 2013 Letter

	Amount	Source
I Individual Recovery Items cited in 2.27.13 Letter		
a. Finding #1 Overpayment	(112,518)	Revised - USAC Letter of 2.27.13, Para. 2
b. Finding #2 Underpayment	-	Unchanged - USAC Letter of 2.27.13, Para. 4
c. Finding #3 Underpayment	6,335,601	Revised - USAC Letter of 2.27.13, Para. 2
d. Finding #5 Overpayment	(29,193)	Revised - USAC Letter of 2.27.13, Para. 2
e. Revised Recovery - Individual Items cited in USAC Letter	\$ 6,193,890	Sum of LL 1.a through 1.d
2 Revised Recovery Total cited in 2.27.13 USAC Letter	5,683,667	Revised - USAC Letter of 2.27.13, Para. 3
3 Variance in Revised Recovery Amounts developed from 2.27.13 Letter	\$ (510,223)	Line 2 - Line 1.e
4 Repayments to USAC included in Innovative Analysis	\$ (512,376)	Innovative Calculations Provided to USAC, Line A.3, Col. (e)

Note: As indicated in the Lines 1.a through 1.e above, the recovery developed from the items specifically identified in High Cost Management's February 27, 2013 recover letter would be \$6,193,890 (Line 1.e). However, paragraph 3 of the letter cites an adjusted recovery figure of \$5,683,667, an amount \$510,223 less than the calculated figure in Line 1.e. As shown by a comparison of Lines 3 and 4 above, this variation is approximately the same as Innovative's suggested adjustment related to \$512,376 in repayments to USAC that were not considered in the initial audit findings. Consequently, it appears that USAC's revised figure reflects the suggested adjustment even though it is not cited in the February 27, 2013 letter, although Innovative cannot determine the basis for the variation between the \$510,223 and \$512,376 figures.